

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 14-54
Table of Allotments,	)	RM-11698
FM Broadcast Stations.	)	
(Toquerville, Utah)	)	
	)	
New FM Station, Peach Springs, Arizona	)	File No. BNPH-20120529ALI

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: September 18, 2014**

**Released: September 19, 2014**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division considers herein the *Notice of Proposed Rule Making*,<sup>1</sup> issued in response to a Petition for Rule Making (“Petition”) filed by JER Licenses, LLC (“Petitioner”), winning bidder in Auction 93 for Channel 281C3 at Peach Springs, Arizona, and Petitioner’s “hybrid” application<sup>2</sup> (the “Application”). Canyon Media Group, LLC (“Canyon Media”), licensee of translator K245BF, Cedar City, Utah filed Comments. No counterproposals or other comments were received in response to this *Notice*. For the reasons discussed below, we grant the Petition and the Application.

2. **Background.** The *Notice* proposed the substitution of Channel 246C for vacant Channel 280C at Toquerville, Utah to accommodate the Application that requests the downgrade of the new FM station from Channel 281C3 to Channel 280A at Peach Springs, Arizona. Petitioner filed Comments reiterating its continued interest in Channel 246C at Toquerville, Utah. Petitioner states that, if allotted, it will participate in an auction for Channel 246C at Toquerville, and if the successful winning bidder, it will construct the facilities as authorized after the construction permit is granted.

3. Canyon Media filed Comments stating that it has no objection against the Application but it objects the Petition. Canyon Media proposes an alternative Channel 281C at Toquerville for the noncommercial educational (“NCE”) vacant allotment. It claims that the NCE allotment of Channel 246C at Toquerville is not viable due to the allotment’s site restrictions. Canyon Media argues that alternative Channel 281C would be a more efficient spectrum allocation under Section 307(b) standards because the allotment would not require any site restrictions, and it could be allotted at the same reference coordinates as the current vacant Channel 280C at Toquerville. Canyon Media submitted a Technical Statement demonstrating that there is no line of sight and substantial terrain obstructions between the Channel 246C allotment reference coordinates and Toquerville.<sup>3</sup> Moreover, the Channel 246C site restriction substantially reduces the number of existing communications facilities where an NCE entity

<sup>1</sup> See *Toquerville, Utah*, Notice of Proposed Rule Making, 29 FCC Rcd 3670 (MB 2014)(“*Notice*”).

<sup>2</sup> See File No. BNPH-20120529ALI, as amended on August 28, 2013.

<sup>3</sup> Canyon Media provided a line of sight profile study depicting the signal path from the reference coordinates to Toquerville that shows a Class C station using a 600 meter tall tower perched atop a 10,000 foot mountain peak. Canyon Media claims that even when using this extremely tall tower on top of a mountain peak, line of sight is broken twice along the path - once with more than 200 meters of obstruction.

may construct Class C facility. Canyon Media states also that Channel 246C at Toquerville would ultimately require the termination of service of its translator K245BF at Cedar City, Utah, a secondary service, since it would violate Section 74.1203 of the Commission's Rules.<sup>4</sup>

4. **Discussion.** We clarify that Petitioner did not request the NCE reservation of Channel 246C at Toquerville, Utah, and vacant Channel 280C at Toquerville is not reserved for NCE use.<sup>5</sup> We recognize that Channel 246C would be short-spaced to FM translator K245BF, Cedar City, Utah but the Commission does not consider the potential loss of service from a translator in allotment proceedings because translator stations operate on a secondary basis.<sup>6</sup> However, we agree with Canyon Media that Channel 246C at Toquerville is not a viable allotment due to the required 46.7 kilometers (29 miles) site restriction northeast of the community.<sup>7</sup> Our staff engineering analysis confirms that there is no line of sight and substantial terrain obstructions for Channel 246C at Toquerville at the proposed reference coordinates; and the restricted site substantially reduces the number of existing communications facilities for a Class C facility.<sup>8</sup> We determine that alternative Channel 281C at Toquerville accommodates the Application for Channel 280A at Peach Springs, Arizona, and would result in the public interest.

5. Accordingly, we substitute alternative Channel 281C for vacant Channel 280C at Toquerville, Utah, and grant the Application. A staff engineering analysis confirms that Channel 281C can be allotted to Toquerville, Utah consistent with the minimum distance separation requirements of the Rules without a site restriction.<sup>9</sup>

6. **Ordering clauses.** Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED That effective November 3, 2014, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the community listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Toquerville, Utah	281C

7. The window period for filing applications for Channel 281C at Toquerville, Utah will not be opened at this time. Instead, the issue of opening this allotment for filing will be addressed by the Commission in a subsequent order.

8. The Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A) .

<sup>4</sup> 47 C.F.R § 74.1203.

<sup>5</sup> *See Toquerville, Utah*, Report and Order, 23 FCC Rcd 461 (MB 2008)(dismissing the proposal to reserve Channel 280C at Toquerville for NCE use).

<sup>6</sup> *See, e.g., Willows and Dunnigan, California*, 15 FCC Rcd 23852, 23856-57 (MMB 2000).

<sup>7</sup> *See Atwood, Kansas, McCook and Ogallala, Nebraska, Burlington and Flagler, Colorado*, Report and Order, 21 FCC Rcd 8802, 8803-04 (MB 2006) (stating that the Commission favors granting new allotments with least restrictive sites).

<sup>8</sup> The staff engineering analysis also confirms that the proposed Channel 246C site, at an elevation of over 10,000 AMSL, would be extremely difficult to access in the winter months

<sup>9</sup> The reference coordinates for Channel 281C at Toquerville are 37-15-12 NL and 113-17-00 WL.

9. IT IS FURTHER ORDERED, That the application, File No. BNPH-20120529ALI, IS GRANTED.

10. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

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